

CORRECTED
MINUTES

LAND-USE STUDY GROUP

CAPITOL ANNEX (OLD ADA COUNTY COURTHOUSE)
WEST CONFERENCE ROOM 117
514 WEST JEFFERSON STREET
BOISE, IDAHO

September 13, 2007

The meeting was called to order at 12:36 p.m. by Co-chair Representative Cliff Bayer. Other committee members present were: Co-chair Senator Russ Fulcher, Senator Stan Bastian, Senator Shirley McKague, Senator Jim Hammond, Representative Lynn Luker and Representative Bill Killen. Senator Lee Heinrich and Representatives Phil Hart, Fred Wood and Les Bock were absent and excused. Ad hoc members present were Dan Chadwick, Idaho Association of Counties (IAC); Ken Harward, Association of Idaho Cities (AIC); John Eaton, Association of Realtors; Jeremy Pisca, Association of Contractors; and Anna Borchers-Canning, Meridian Planning & Zoning. Staff members present were Paige Alan Parker and Jennifer O’Kief.

Others present included: Fred Tilman, Ada County Commissioner; Carl Olsson, Idaho Tax Commission; Tonya Wallace, Heather Mink and Bruce Chatterton, City of Boise; Nichoel Baird-Spencer and Stephanie Bonney, City of Eagle; Tim Hurst, Secretary of State’s Office; Jedd Jones, Capital Investors; Robert Kunesh, Southwest Ada Neighborhood Association; Sara Cohn, Idaho Conservation League; Jerry Mason, Association of Idaho Cities; Representative John Vander Woude, District 21; and Erin Bennett, Veritas Advisors.

Representative Bayer invited introductions from the attendees. **Senator Hammond** moved to approve the minutes of August 16, 2007 with corrections. **Representative Killen** seconded.

Representative Bayer explained that the agenda for the day was put together based on dialogue from the first meeting of August 16, 2007. The focus for the meeting would be to provide further detail and clarify some of the existing processes.

Corrections: References to IAC (Idaho Association of Counties); References to AIC (Association of Idaho Cities); On page 2, 2nd paragraph, last sentence, “school district boundaries” was changed to “cemetery boundaries”; On page 4, paragraph 5, 1st sentence, “mutual aid packs” was changed to “mutual aid pacts”.

Carl Olsson, Deputy Attorney General, State Tax Commission, was the first speaker. **Mr. Olsson** stated that the role of the State Tax Commission is quite limited. Once a proper annexation is reported to the Tax Commission, the Commission changes the district boundaries, making sure the tax code areas reflect the changed boundaries so that people in those districts receive the appropriate tax code, assessment notice and tax bills for the appropriate month. The Commission is not involved with taxing district budgets and expenditures. The Commission does review budgets making sure the property tax portion does not exceed the 3% cap.

Mr. Olsson briefly explained the difference between a fee and a tax. A fee is a charge that a person can theoretically avoid by not taking the service for which the fee is charged; a tax is imposed whether the particular service is used or not. He said that the Idaho Constitution requires uniformity, which has been determined by the Idaho Supreme Court to require that property is taxed at market value and that the levy rate is uniform within the taxing district. A delay in the imposition of a tax in a city until services are provided would violate the uniformity principle. Where a city provides service to an annexed area that a special district provided, by statute the boundary is adjusted to take that service out of the special district. The Commission is notified of the annexation so that the special district boundary is changed so that taxation for duplicative services is avoided. However, *cemetery* district boundaries are not changed by annexation.

Representative Killen asked if the duplicative services are provided in the abstract or in actual service being provided. For example, where sewer services are provided to an area by a sewer district which is annexed into a city but where the city sewer lines don't extend into that area. **Mr. Olsson** said that the Commission wouldn't know the facts on the ground as to where the sewer lines extend, but would adjust the city and district boundaries to reflect the annexation. **Representative Killen** commented that it has been his experience that gravity flow systems are driven by topography and not by boundary lines, and it would make more sense for the taxpayer dollar to delineate gravity flow systems by topography. **Mr. Olsson** said the Commission doesn't have the authority to look at topography.

Representative Luker asked why fee-based sewer and water services would be an item on property tax. **Mr. Olsson** said that they are always fee-based services. There are water and sewer districts that are funded by property tax. Special districts impose property tax while cities most often impose user fees.

Senator Bastian stated that if fees for city water services go into an enterprise fund, those fees cannot be used to finance city operations. **Mr. Olsson** deferred to **Jerry Mason**, Association of Idaho Cities, who said that typically, municipalities operate utilities as enterprise funds, but it is not unlawful to spend tax money on those activities. In some instances, to reflect the full cost of operating a system, the enterprise fund may pay the general fund a contribution for administrative costs. Enterprise funds are part of the city budget but are accounted separately.

Senator Fulcher expressed concern that, upon annexation, there are areas of duplication of services and corresponding taxes accompanying those services. He asked if there were other services, other than police, where both the city and county were charging for the same service. **Mr. Olsson** said that as the

city expands, the Commission correspondingly adjusts the boundaries of the special district that provided services such as water, sewer and fire. The exception is for a cemetery district, where there is no Code authority to adjust boundaries, and for mosquito abatement districts, which are countywide. This situation does not apply to counties because only the Legislature can amend county boundaries. Residents annexed into the city may pay more, but there are not two charges for the same level of service.

Senator Hammond explained that the response time for police protection within the county may be significantly greater than in the city. Otherwise, there is not true overlap with regard to the county courts and jail and highway district funds. The county is responsible for planning areas outside of cities which is relinquished to the city after an annexation, but the taxes charged for that service may not be diminished. A county-by-county would have to be conducted because the challenges vary greatly in terms of what planning issues are still before the county versus those before the city. There is very little duplication with parks and recreation because county parks are usually in more remote areas and not near the city. General administrative services within a city such as finance, the mayor and general administration of the city operate a lot on fees as well as some tax. Recreation tends to be more of a city service than a county service. There is a little bit of duplication of planning and police protection services, but otherwise, in reality, there is minimal duplication.

Senator Fulcher recapped by saying there could be four areas where duplication may be an issue: cemetery, police, pest control and planning services. He asked for others' comments.

Senator Bastian commented that there are "fuzzy" lines. As an example, the county residents use city parks and the city residents use county parks. There are interlibrary loan options that afford borrowing options between cities and counties. Most of the services are either county or city identified, but if you're driving through a city and you get robbed and you live in the county, the city is probably not going to come to your aid and say, "Oh, you are a county resident and we can't help you." In these circumstances, there might not be double taxation. **Senator Bastian** asked **Mr. Olsson** where the county reduces its tax to residents in the city or in a special district or whether a general countywide fee applies to all. **Mr. Olsson** said there was no provision for either not collecting the tax in the first place or rebating it due to service duplication. The city, the county and all the taxing districts have to collect tax at market value and apply the same levy rate.

Representative Luker asked whether there was a potential for double taxation where a city annexes an area that is serviced by a water or sewer special district? **Mr. Olsson** explained that where a special taxing district is providing the sewer and a city which provides sewer annexes part of the land in that special district, the Code provides that the boundaries of the taxing sewer district are diminished to exclude the newly annexed part, thus preventing the patrons from paying twice for sewer services. He stated that it is possible that the patrons could be double billed if the sewer district boundaries were not diminished for some reason. **Mr. Olsson** suggested that one way of making sure that the Commission receives the information is to require that the city provide it when the city annexes.

Representative Luker asked how many cities actually fund their water and sewer out of property taxes as opposed to fees? Also, regarding the annexation of an area where people are on wells and septic are these people paying for water and sewer services they are not receiving? **Mr. Olsson** said that where a property has a well or septic and residents are not receiving city water and sewer services, those people could pay if the city funded such services through property taxes. Likewise, if that particular property falls within a sewer district, the sewer district would impose a tax even when it is not providing sewer services to that property.

Representative Luker asked, assuming there was no sewer district in an area that the city annexes, does the city use property taxes to fund water and sewer or is it a fee-based system. He commented that if it does come out of the levy rate, there is a problem. **Mr. Olsson** deferred to **Mr. Mason** who stated that he was not aware of any city that uses tax revenues for utilities; the norm is to charge user fees. **Representative Luker** commented that if someone were annexed into the city from the county, they may end up paying an extra 30% in their property tax. He suggested that it would be helpful to know what additional services the 30% would cover. He referred to a document provided by **Dan Chadwick**, Executive Director, Idaho Association of Counties that listed the required county services. A copy is available from the Legislative Services Office.

Mr. Chadwick referred to Title 31, Chapter 22, which provides that the sheriff and the prosecutor are the primary law enforcement authorities in the county, without regard to municipal boundaries. Regarding a greater response time, resources are limited and the county does not have the ability to provide all of the resources necessary for law enforcement. In his opinion, there isn't any duplication regarding basic law enforcement services.

Anna Borchers-Canning, Planning Director, City of Meridian, asked, given **Mr. Olsson's** explanation that there cannot be a different county tax for incorporated residents versus unincorporated residents, whether a countywide, special district could be created that would provide county services and that would be diminished upon an annexation. **Mr. Olsson** said that it could be possible to construct a system that would do that. However, it would require a massive revamping of county Code. **Senator Bastian** stated that creating another overlying special district did not make sense.

Representative Killen responded by saying that there are a lot of cities and counties that have mutual aid *pacts*, both formal and informal, covering such matters as law enforcement response, emergency services, snow removal on school bus routes, etc. Cities and counties work together cooperatively on a "handshake" because it makes sense and saves money. Keeping in mind the fact that although there is perhaps double taxation in some instances, there are also services provided at no charge by cities and counties who are trying to be responsive.

Senator Hammond commented that where a city annexes an area served by a water or sewer district, the city will work out an agreement with the district to continue to provide that service when the city does not provide that service, rather than overlay another water infrastructure over one that is already in place. Here again, there is not duplication.

Senator Bastian stated that the cities of Kuna, Star and Eagle have a contract with the Ada County Sheriff's office to provide police protection. Those communities find it less expensive to contract with the county. There can be huge savings when there is county/city cooperation. Referring to the document provided by the Idaho Association of Counties, **Senator Bastian** remarked that he did not see any duplication of the listed services. He said that policing would not be duplicated because cities provide additional police services. **Mr. Bastian** does not believe that cities support water or sewer service through general funds. Instead such services are supported by separate, enterprise funds based on ratepayers, hook-up fees or initial construction charges, such as trunk line charges where development pays for itself.

Tonya Wallace, Boise City Financial Services Manager, the next speaker, gave an overview of the Boise budget process. Sewer is a completely fee-supported program. The city looks at the entire revenue portfolio for all the general services. Property taxes amount to about 60% of the entire portfolio. Ten percent is sales tax revenue sharing with the state, a specialized formula that doesn't link to the services that are provided by the city. Point of sale, for example, doesn't come into play, just the population and market value. The remaining revenue portfolio is composed of user fees, including parking and licensing fees. All of the fee services provided in the general fund are subsidized by that property tax, sales tax, liquor tax, interest income or franchise revenue. The city is heavily reliant on revenues over which it has little control to support service costs. She stated that nearly one-half of all of the money from property tax goes to public safety services, which generate little revenues of their own. Parks, planning and libraries are subsidized as well. The costs of those services are based on demand, and not on population. The city struggles to determine whether it will meet or maintain the service level when demand increases.

Ms. Wallace stated that the impact from an urbanized development or high density area that is out of the city is very great on city services. Chances are those residents living outside the city are working in the city, using the libraries, parks and city services that city residents are subsidizing. Residents in such high density areas are not paying for those services, except in cases where they are paying a user fee, such as zoo fees, etc.

Senator Fulcher asked **Ms. Wallace**, why would consent to annexation be implied from hooking on to city sewer if sewer is driven by fees, rather than property taxes. She replied that if the city is extending sewer service out into an area, it is a high density area. Rarely would the city want to incur the cost of extending sewer service that will drive the costs up for all users of that system unless it is a high density area.

Senator Bastian stated that, under current law, the city cannot annex an area outside of the city that desires city services but is not contiguous to the city. For example, a developer and/or a developed community that finds its septic system isn't working and doesn't have the ability to provide additional septic service may request that the city provide it sewer services. The city could agree to extend the sewer services based upon the agreement that the area will be annexed when it becomes contiguous. **Senator Bastian** said this was probably done when the Southwest area of Boise was extended water and sewer. **Ms. Wallace** commented that much of that extension was due to the failure of septic

systems.

Representative Bayer stated that there can be extenuating circumstances where there is facilitation and cooperation between a city and a county, but sometimes not. Where there is high density growth far from the city limits, there may be a mix of city services that are used and not used. For example, the former Owyhee Sewer District in Ada County experienced a bad situation where the households hooked up to it far exceeded its capacity and where tighter DEQ regulations cut the surface area for water dispersion in half. The people in the Owyhee Sewer District had to choose between building a facility or tying into a trunk to the existing system in Boise, which was the path chosen. The Owyhee Sewer District residents didn't necessarily view that as going hand-in-hand with a consent for annexation.

Representative Luker asked if **Ms. Wallace** would provide a list of the services that the city provides and include the approximate proportion of the budget. **Ms. Wallace** would provide a copy of the public hearing notice that provided a brochure with that breakdown. She said the entire Boise budget is also on its website.

Representative Killen asked if the city currently has a particular policy on extending services outside the existing city limits or whether it is on a case-by-case basis? **Ms. Wallace** said it does depend on the service. With some services such as planning, the city provides a higher level of service. However, the city cannot always control whether a Boise resident or a nonresident will receive the service. She said that utilities are by contract. She referred to the example of the cornfield being developed into a high density urbanized area that will impact the city which results in less revenue for the residents of the city, because the residents will have to subsidize those services.

Representative Bayer, referred to the property tax rate table that had been presented at the first meeting by Alan Dornfest of the State Tax Commission which showed a wide disparity in the range of levy rates and asked how varying levy rate levels related to service quality. **Ms. Wallace** said that the breakdown between city services and levy rates would vary according to the services provided. Some cities provide highways; the city of Boise does not. Some cities will have other special taxing districts that provide services that may affect the levy that a particular city might assess. For example, the city of Meridian has a library district, so its levy rate would not include that service. Other situations of variability would be highway, cemetery, pest control and recreation districts.

Mr. Chadwick remarked that there is a great variability in the state with regard to the counties. At least two counties do not have jails, but contract with a neighboring county for the jail service. There are also joint powers agreements between counties, where one will handle the jail and the other will handle the detention center. Some jurisdictions that have low levy rates will never catch up due to the 3% annual growth cap that was imposed in 1978. **Mr. Mason** said that most jurisdictions, today, are where they were in 1978 in terms of their revenue resources. Some of these jurisdictions have hardly changed in population and demands while others have grown dramatically. There are many important issues affecting cities and counties that are very different from one another. He said that a very important aspect of having vibrant communities is allowing local decision-making. Much of that has

been taken away by the system that has evolved. **Mr. Mason** interjected that water and sewer may be separate “financial” issues, but that the role of water and sewer in land use planning is anything but separate.

Representative Killen remarked that the collateral consequence of the 1978 policy change led to the creation of a wide multitude of independent taxing districts. Because there were “frozen” limits placed on the counties and cities, the only way to accommodate occurring growth was to create every conceivable independent taxing district that the local “movers and shakers” could think of because that was the exception to the levy caps. If the goal is to continue to see the growth of independent taxing districts, the “freeze” cap approach is guaranteed to produce that result. **Mr. Mason** commented that it does cost more because every entity has its own overhead.

Tim Hurst, Chief Deputy Secretary of State, the next speaker, addressed general election parameters. He stated that the position of the Secretary of State’s Office is that a person has to be a resident of the jurisdiction in which the person votes. He said that if a person lives in an area that is annexed by the city is registered to vote in a county election, that person would be eligible to vote in the city election. If a person wants to run for mayor and lives in an area that has been annexed, the person would have to file seventy-five days before the election in order to run for office.

Senator Fulcher expressed that the concern has been where people are annexed by a city council that they never had an opportunity to vote for. **Senator Fulcher** asked Mr. Hurst how the elected officials could be made accountable to the people they had just annexed. **Mr. Hurst** said that he did not know how a person could vote for someone in another jurisdiction. The constitution provides that in order to vote in a city, a county or a taxing district, a person has to be a resident of that district.

Representative Killen, referring to recreational, water and sewer districts, asked about the vote currently extended to nonresident property owners who are otherwise a resident of Idaho and are otherwise qualified to vote. **Mr. Hurst** said that the property owner’s right to vote in such districts has not been challenged in the Supreme Court, which has been thrown out in every other instance.

Bruce Chatterton, Planning Development and Services Director, Boise City, the next speaker, addressed the annexation process by way of illustrating the 2004 Southwest annexation that occurred in Boise. His PowerPoint Presentation is available from the Legislative Services Office. **Mr. Chatterton** emphasized the strong legislative burden that is placed on cities for annexation. The city is required to plan years in advance for annexation of an adjacent area of impact after having invested millions of dollars in parks, sewer services, recreation and planning for public safety in anticipation of annexation into the city. He highlighted several factors regarding the Southwest annexation. In the 1970’s the Southwest area was undergoing rapid development with over 20,000 residents and 6,000 homes on septic tanks. Because of ground water contamination due to septic system failures, the county issued a moratorium. At that time the city began to prepare a master plan for extension of the sewer.

Senator Fulcher asked to what extent the city coordinates with the county and the cause of the

density in the Southwest area prior to the annexation. **Mr. Chatterton** said that the city's relationship to the county is advisory. The reality is if there is development pressure and if it is possible legally for urban level development inside a county, it will happen. **Mr. Chadwick** yielded to a question from **Senator Fulcher** who asked how the county sets its criteria for approving an annexation. **Mr. Chadwick** stated that both the cities and the counties have to go through the comprehensive planning process and have to identify areas that will be appropriate for development. **Mr. Chadwick** said that, in his opinion, there is a lot of cooperation, agreement and consultation between the cities and counties. The law allows for joint planning boards between cities and counties. Cooperation depends on the perspective of the elected officials and how they develop their comprehensive plans and ordinances. **Senator Fulcher** ask whether cooperation depends on who is in charge at the time. **Mr. Chadwick** replied that the law provides the criteria on how to plan for development. The law does not allow for a city to control development outside of its corporate boundaries. **Mr. Chatterton** added that the existence of the area of impact is key because when the city has an area of impact and negotiated with the county, there is also a clear expectation that at some point urban development will take place within that area.

Senator Bastian said that a partial answer is that the law allows a county to have a planning and zoning board and a plan for urban-type development. A county can also approve large planned communities, which are separate from the city. Sometimes developers play the county and city against one another by asking a city for concessions. If the city is unwilling, then the developer will approach the county and once approved, without the city ordinances applying to the development, will ask to be annexed or will develop outside the city in the impact area. His preference would be to limit urban development to impact areas contiguous to city boundaries and under the direction of the closest city so that annexation could occur at the same time.

Mr. Chatterton said that during the 1990's, the city completed numerous sewer extensions, serving 15,000 to 20,000 residents in the Southwest area, at an investment of over \$10 million. Cities have had a special role in providing for urban services. Under state law principles, urban areas contiguous to cities need to be annexed in an orderly fashion so that services can be provided in an orderly fashion.

Mr. Chatterton explained that the Southwest annexation was a Category B annexation, which consisted of over 100 parcels with owners of more than 50% of the area having consented. Notice was given according to the requirements set out in Idaho Code and the City Code. He explained the notification procedures that were applied during the annexation process. Pursuant to those requirements, the city provided an annexation plan to show how they are going to provide services at the very moment the area was brought under city jurisdiction. He noted the vast improvement programs for three parks in the Southwest area, with two included in the annexation and with the third being delayed until future annexation. He also noted the fire protection plans for the annexation.

Senator Fulcher asked if those plans were shared with the county commissioners and whether the county commissioners were aware of the city's intent. **Mr. Chatterton** said the plans were shared with the county commissioners and were updated frequently.

Senator Fulcher asked how the cities and counties deal with the extraordinarily fast growth areas in the state. **Mr. Chatterton** said that Boise City and Ada County are in constant communication regarding both development and application review. There is constant give and take. **Mr. Mason** said that he has represented both counties and cities in these matters and there are separate political perspectives. City officials have exclusive land use authority within city limits. County commissioners, who are independently elected, pay close attention to land use issues outside the city limits but may know very little about a city's needs. He said that it works most of the time and when it doesn't, it is noticeable.

Representative Bayer asked when the Southwest area was deemed an area of impact. **Mr. Chatterton** answered approximately twenty years ago.

Representative Luker asked: 1) Were there any changes to those plans as a result of the 2004 hearings? 2) What was the percentage of actual consents at the time of annexation? and 3) Were there areas where planned fire protection services did not overlap? **Mr. Chatterton** answered the last question by saying there may be an enclave located in the areas that is not served by the four minute fire protection response time. Responding to the second question, the consent was displayed by a GIS system showing those areas that consented to annexation and why. Regarding the first question, part of one neighborhood was excluded from the annexation as a result of the 2004 hearings.

Representative Luker asked if there were a number of people at the hearing who didn't realize that they had consented. **Mr. Chatterton** said that was difficult to answer because there were a number of people who said that they didn't know. But in some cases, there were written requests from some of these same individuals asking for sewer service. There were a greater number that acknowledged consent but still opposed annexation primarily because of taxes.

Mr. Chatterton said that one frustration was footing the bill for "ramping up" the urban response levels for police and fire services without the revenues to offset the cost. However, that level of service was met on the first day of the annexation.

Senator McKague referred to a number of smaller farms that could not keep their animals once they were annexed and asked if there weren't some type of reprieve for these people. **Mr. Chatterton** said that the city allows one farm animal per household, but perhaps the City Code should be reviewed regarding that issue.

Representative Bayer asked if it would be fair to say that city sewer service wouldn't be extended without inevitable annexation. **Mr. Chatterton** said that was correct. **Representative Bayer** said he would presume that the consideration of having a sewer relationship outside the city without ties to annexation has never been an option. **Mr. Chatterton** said probably not.

Representative Bayer asked **Mr. Chatterton** to comment on the possibility of tying the annexation process, election cycles and city office candidate filing deadlines together in a timeline with the objective of facilitating the accountability of elected officials to the people being annexed. **Mr.**

Chatterton said the issue of representation is somewhat addressed by the area of impact. The voters within the area of impact are represented by the county commissioners at the time those boundaries are designated and then afterwards. Regarding the timing, he did not know how coinciding the election cycle and annexations could be done.

Representative Luker noted that if someone in an unincorporated area requests city sewer and is “hooked,” they don’t have to sign the annexation consent. Does Boise City policy require that they sign a consent anyway, or just rely on the law? **Mr. Chatterton** said he was not sure if an actual consent was signed but he would find out and provide that information.

Regarding financing sewer, **Ms. Wallace** said that the Boise sewer fund is completely self-supporting. The capital outlay comes from the sewer fund. The connection fees cover capital expenditures such as treatment facility expansion. The service fees support the operation of that system. **Mr. Chatterton** said that the city’s response to a request for sewer service by someone in an incorporated area represents both a policy and a financial decision. There are situations where a request would be declined because it would not be cost-effective to extend a long line out to a low-density area.

Responding to **Representative Killen**, Ms. Wallace said that the city uses revenue bonding authority to support sewer expansion, although a majority vote is required. The city has also received loans from DEQ.

Senator Bastian commented that sewer trunk lines are development driven. In a new development, the developer would have to comply with the city plan and put in the trunk line. Once constructed to municipal standards, it would be inspected and then dedicated to the city. Consequently, new construction is typically paid for by the developer prior to the sale of the lots and is part of his cost that is passed on down eventually to the home buyer. If an urbanized area has wells and septic tanks and the people want to receive city services, a local improvement district would be involved in making an assessment and bringing in the trunk line and connections to provide that service. Bonding would probably be the last choice for a community to provide sewer for development. The existing customers in the sewer system aren’t expected to pay for new hook ups and development.

Mr. Mason, responding to **Representative Luker’s** inquiry, said that most cities will not extend services outside of the corporate limit. The whole analysis of sewer isn’t just financial. A city operated sewer system is subject to EPA regulation which is implemented by passing a comprehensive discharge ordinance to regulate what can be disposed of. That ordinance provides the law only within the city limits. In order to carry that authority outside the city limits, it must be done by contract.

In response to a question from **Representative Bayer**, **Mr. Mason** said that a city does not have ordinance authority outside of its corporate limits, so it has to deal with the world that is dealing outside its corporate limits on a contractual basis. **Ms. Borchers-Canning** commented that as a rule no city wants to really provide sewer outside its annexation area. However, there are some times when politics enters planning. A city may want to extend service to an area that is deemed to be part

of the community, even though another community can serve that a little more easily. There is a struggle sometimes in trying to keep community identity.

Fred Tilman, Ada County Commissioner, was the next speaker. He said that every city in Ada County deals with growth differently and therefore deals with the county differently. He recognized the frustration of the city in trying to provide sewer service and then going back and trying to convince people, after the fact, that they need to be annexed. The Southwest Boise annexation represented a policy that was agreed upon with county commissioners at that time, but does not represent **Mr. Tilman's** thinking. He said that most other cities in Ada County have a policy not to provide sewer outside of the city limits. If someone wants sewer, he has to agree to be annexed. The law says that once you are provided municipal sewer, it is an implied consent.

Commissioner Tilman expressed concern regarding annexation that is occurring outside of an area of impact. He explained that the law does allow growth outside the area of impact if two elements are met. First, all the landowners consent; and second, the land is contiguous or adjacent to the city. He stated that cities are using this tool in order to accommodate the private property rights of private landowners. He stated that the area of impact negotiation process needs to be reviewed. He expressed concern with this issue particularly when annexation is allowed outside the area of impact.

Representative Bayer, for the benefit of some of the members who were traveling and had to leave early, announced that the next meeting will facilitate some public testimony on the annexation and the area of impact issues and also begin discussions that will address the issue of urban renewal. The next meeting was scheduled for October 25, 2007.

Senator Fulcher asked what the impact would be if a change was made to disallow annexations outside an area of impact. **Commissioner Tilman** agreed that such a change would put a new emphasis on the area of impact since cities would feel that they would be required or had an opportunity to use the laws as written to deal with property owners. He cautioned that if the Legislature were to refine the area of impact process, that the Legislature consider all of the issues, conflicts and concerns.

In response to a question from **Senator Fulcher** regarding the city's position to limiting annexation to areas of impact, **Ken Harward**, Association of Idaho Cities, said that there are some developers who are operating under the existing law which would be affected. He believes there would be mixed reaction from the Association's membership.

Senator Bastian recognized **Nichol Baird-Spencer**, Eagle City Planner, and requested that she be given the opportunity to address the Study Group on the area of impact issue. He explained that the city of Kuna had asked for an area of impact change in 2003. Kuna has grown to its limits of the area of impact. Yet, there are landowners and developers who are coming to Kuna seeking to establish subdivisions and annexation into the city. If annexation outside of the area of impact is prevented, what happens to cities like Kuna that have already grown beyond their area of impact that are faced with applications for additional growth? What happens to cities who have not established areas of

impact?

Jeremy Pisca, Attorney, Idaho Builders Association of Contractors, commented that he had not heard any good reason to prohibit annexation outside the area of impact. Why put landowners in a fight between jurisdictions and put property in conceptual limbo? **Mr. Pisca** commented that growth does not stop outside areas of impact.

Representative Bayer asked if he could see any circumstance that would justify one city annexing into another city's established area of impact. **Mr. Pisca** said that would depend on the facts. The area of impact is a model, but not an absolute. Efficiencies, health and safety should be considered.

In response to an inquiry from **Senator Fulcher**, **Mr. Pisca** replied that there are standards that the developer must meet in order to get county approval for a development outside the city. Anyone has to know that where Boise is logically going to expand. So now you have the city of Boise standards expanding out and overlapping the county standards. If there is an agreement to annex between the city and the landowner seeking annexation, there is no question as to the applicable standards.

Representative Killen commented that the problem he sees is that there has been a shift from a long-range perspective, basically what the Land Use Planning Act was designed to foster, to a short-term money/market driven scheme. He said that the long-term perspective is the role of government; and therefore, "claim jumping" should be discouraged.

Ms. Borchers-Canning commented that there could be huge problems with an entity annexing within another's area of city impact. For example, an obvious problem arises if residential development has been planned on the border of a community and another community decides that would be a great place for industry. She stated that the guidance that the local Land Use Planning Act currently gives, relative to those areas of city impact, "is woefully inadequate."

Representative Bayer asked **Commissioner Tilman** if he knew of any circumstances where one city was providing sewer service into an area of impact that another city annexes. **Commissioner Tilman** couldn't speak to that question directly but did know of such areas that had been annexed that did not have sewer. **Commissioner Tilman** commented that the idea of area of impact is really talking about planning and who is going to do the planning. He said that currently they have areas with three different entities planning the same area, each coming up with different densities, thoughts, ideas, etc. Coordinated efforts to plan logically and efficiently are absolutely necessary.

Commissioner Tilman answered a question from **Representative Killen** by saying that cities do decline requests for annexation, based on what the conditions are. Sometimes conditions, such as limitations on providing water, could prevent an annexation.

Nichoel Baird-Spencer, Eagle City Planner, addressed the issue and concern of preventing annexation of an area of impact outside of the area of impact. Ms. Spencer commented that Eagle is growing fast, but not always systematically. Growth has been spurred by developer driven facilities.

She stated that there has been controversy over the area of impact and deciding which comes first, the city plan or the area of city impact. She noted that Washington and Oregon do not allow counties to develop to urban densities and are required to remain rural. She said that if the committee considers limiting annexation outside of areas of city impact, that it should also consider the factors feeding growth. She believes that the area of impact is a planning tool. She requested that the committee not prohibit consensual annexation.

Senator Bastian commented that if annexation is prevented outside of approved areas of impact, there could be a political game played between counties and cities with the county wanting to also be involved in urban planning. Planned communities might be developed in the county that would impact city services. Also, cities may compete over an area and annex within another city's area of impact. He cautioned that changing the status quo must be very carefully considered.

Representative Bayer commented that the county should be part of area of impact development. He also expressed concern about what one city's area of impact might become by the action of a neighboring city. He expressed concern for the property rights and representation of landowners.

The meeting was adjourned at 4:40 p.m.